

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5964 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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PATEL GOVINDBHAI BABABHAI

Versus

GUJARAT ELECTRICITY BOARD

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Appearance:

MR BR PARIKH for Petitioner

MR MR GEHANI for Respondents

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 29/11/96

ORAL JUDGEMENT

1. Heard learned counsel for the parties.

The facts of the case briefly are that the petitioner is the owner of agricultural land bearing Survey No.102/1/A situated in the outskirts of the village Ajarapura in Vijapur Taluka. The petitioner had an electric connection on the well situated at the said land bearing Consumer No.AG/13 of Ajarapura under Lodra

Sub Division of Gujarat Electricity Board. The petitioner had taken the electric connection for an electric motor of 60 H.P.. At the later stage as the water level in the well subsided, the petitioner applied to the respondent no.2 for reducing the electric load in order to operate the electric motor of 45 H.P.. This application dated 18-6-1983 was granted by the respondent no.2 under its letter dated 18th August, 1983 and accordingly the electric load and the power supply was reduced. The petitioner submits that the electric meter was examined regularly at intervals of two months for the purpose of meter reading and there was never any complaint of nonpayment or irregularity in working of the meter. In the absence of petitioner and his family members, some persons from the office of respondent no.2 came and demanded the key for opening the room in which electric meter and starter were kept in the field. In absence of any of the persons of the petitioner, those persons opened the room and removed the electric meter by disconnecting the electric supply. On his approach to the Sub-Divisional office on the next day, one Mr. D.J. Patel demanded Rs.5000/- from him in order to finalise the case. The petitioner received a letter dated 8-5-1984 calling upon him to deposit Rs.11818/- being 20% of the estimated demand for getting the reconnection and to submit a written undertaking on a stamp paper to pay the remaining 80% of the amount. The petitioner has not complied with the aforesaid demand. Thereafter, the petitioner received a letter dated 19th July, 1984 alongwith a demand bill for Rs.59090-85. Considering it to be fully unjust, arbitrary and illegal demand, the petitioner preferred Special Civil Application No.4309 of 1984 before this court, but that Special Civil Application has been withdrawn by the petitioner on 14th September, 1984 on the statement made by the counsel for the respondent. The counsel for the respondent in the previous writ petition had made a statement before this court that the Board will not take any action on the bill without hearing, and after hearing the petitioner will pass fresh necessary orders. It is not in dispute that thereafter the petitioner was called upon to give his defence. The petitioner has been given show-cause notice and the grievance of the petitioner is that the said notice has been issued with a predetermined mind. The petitioner has admittedly replied to that show-cause notice. The final order has been passed and it has been held that the bill issued earlier by the Board is legal and reasonable. That order is challenged by the petitioner in this Special Civil Application.

2. The reply to the Special Civil Application has

been filed in which the respondent-Board has taken the plea that the petition is not maintainable as it involves the disputed questions of facts. Another plea has been taken that after passing the order dated 9th November, 1984 (impugned in this Special Civil Application) the notice dated 20th December, 1984 was served upon the petitioner to pay the bill. The petitioner did not replied to that notice. Thereafter, the respondent-Board gave notice on 24th May, 1984 through their advocate to the petitioner to pay the amount otherwise legal proceedings would be taken against him, but the petitioner did not replied to the legal notice and as such, the Gujarat Electricity Board, the respondent was constrained to file Civil suit No.0109 of 1985 in the court of Civil Judge (S.D.) Mehsana on 13th August, 1985.

3. The counsel for the respondent made a statement before this court that the said suit has been decided by the Civil court partly in favour of the petitioner and partly in favour of the Board and both the parties have already filed appeals before this court against the judgment and decree of the Civil Judge.

4. The counsel for the petitioner does not dispute the fact that the Board filed the suit for recovery of the amount demanded under the impugned order dated 9th November, 1984 and the said suit has already been decided.

5. This writ petition is not maintainable as in respect of the same amount the suit has been filed by the Board and the petitioner was entitled to take all the objections against the demand. The counsel for the petitioner has not raised the issue that the petitioner has not taken all the defences available to him in the suit and secondly that the ground which has been taken in this Special Civil Application has also not been taken. The petitioner at no stage has approached to this court by way of filing a revision application or by making an application in this Special Civil Application praying for staying the proceeding of the civil suit. On the other hand, the petitioner has allowed to proceed the civil suit and he has taken a chance in the civil suit to get the decision in his favour. Once the matter has been adjudicated by the civil court for the same cause and relief, the petitioner cannot have another remedy under Article 226 of the Constitution of India. It is true that the civil suit has not been filed by the petitioner but nevertheless the subject matter and the cause of action was the same in the suit which is the subject matter and cause of action in this writ petition. The

petitioner cannot avail two parallel remedies in the matter at the same time. Moreover, once the matter has been finally adjudicated by the civil court which was also an appropriate forum available for the redressal of the grievance against the demand, this writ petition does not survive. Whatever defences and grievances which the petitioner has against this demand he has taken and should have taken in the civil suit and that will be decided by this court in the first appeal as the civil court has already decided the matter and the matter is sub-judice in first appeal before this court.

6. In view of these facts this Special Civil Application does not survive and the same is dismissed. Rule is discharged. Interim relief granted by this court stands vacated.

7. However, it is made clear that the dismissal of this Special Civil Application will not affect in any manner the merits of the claim of the petitioner which he made as well as the defence which has been taken by him in the civil suit filed by the Board.

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